No. 12147

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

FRANCIS F. QUITTNER, as Trustee in Bankruptcy of the Estate of Alvera Gordon Jones, doing business as LE ROY GORDON BEAUTY SALONS,

Appellee,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a National Banking Association,

Appellant.

APPELLANT'S REPLY BRIEF.

ROANE THORPE,
215 West Sixth Street, Los Angeles 14,
Attorney for Appellant.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

TABLE OF AUTHORITIES CITED

No. 12147

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

FRANCIS F. QUITTNER, as Trustee in Bankruptcy of the Estate of Alvera Gordon Jones, doing business as LE ROY GORDON BEAUTY SALONS,

Appellee,

vs.

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES, a National Banking Association,

Appellant.

APPELLANT'S REPLY BRIEF.

Appellee relies strongly under his POINT I on the fact that the bankrupt was allowed overdrafts frequently, and cites the case of *Boston National Bank v. Early,* 17 Fed. Rep. 2d 691, in support of his contention that the Appellant was put upon inquiry because of such overdrafts. The Appellant believes it has demonstrated to the Court that there was nothing unusual about these overdafts, and that, by reason of the method of operation of the various beauty shops of the bankrupt, it was a frequent and established procedure. Surely a bank would not continue to permit overdrafts under these circumstances if it felt its depositor to be insolvent.

Under POINT II of Appellee's brief it is contended that facts and circumstances were brought home to Appellant that should have put it on notice. It is respectfully submitted that the financial statement shown Appellant dated on or about August 31, 1947, wherein a net worth of $19,450.35 is shown, was the last information Appellant had relative to the books of the bankrupt, and that it had a right to rely thereon.

Dougherty v. First National Bank of Canton, 197 Fed. Rep. 241.

Under POINT III of Appellee's brief he has gone into the proposition as to whether or not the evidence sustains the Finding that at the time of the payments to Appellant the fair valuation of the aggregate of the bankrupt's property was sufficient to pay her debts.

In answer to the Appellee's contention, Appellant takes the position that no valuation of the assets was proven by Appellee based on the business of the bankrupt as a going concern, but only as dead property after the bankruptcy had intervened. In the case of *Dougherty v. First National Bank of Canton,* cited above, the Court said in part:

> "* * * but the valuation for the test of solvency or insolvency under the issue made must relate to the conditions affecting the hotel as a going concern when the mortgage was given, and not at its value as dead property after bankruptcy intervened * * *"

Again, in the case of *J. W. Butler Paper Co. v. Goembel,* 143 Fed. Rep. 295, the Court said in part:

> "* * * The valuation for the test of solvency or insolvency under the issue must relate to the conditions, as going concern, when the alleged prefer-

ence was given, and not to the mere dead matter of the plant after bankruptcy intervened; * * *"

Nowhere in the record does any valuation of the aggregate of the bankrupt's property as a going concern appear except in the statement of August 31, 1947, which shows the bankrupt to have been then solvent.

Conclusion.

It is respectfully submitted to the Court that Appellee has not sustained his burden of proof.

Respectfully submitted,

ROANE THORPE,

Attorney for Appellant.